

United States District Court
Eastern District of California

Mark A. DuRoss,

Petitioner,

vs.

Scott Kernan, Warden,
et al.,

Respondents.

No. Civ. S 04-0638 DFL PAN P

Order

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On March 30, 2004, petitioner filed a petition for a writ of habeas corpus. On June 24, 2005, the court dismissed this action as untimely and the clerk of the court duly entered judgment. Petitioner seeks relief from judgment.

Pursuant to Fed. R. Civ. P. 60(b):

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence


1 which by due diligence could not have been discovered
2 in time to move for a new trial under Rule 59(b); (3)
3 fraud (whether heretofore denominated intrinsic or
4 extrinsic), misrepresentation, or other misconduct of
5 an adverse party; (4) the judgment is void; (5) the
6 judgment has been satisfied, released or discharged, or
7 a prior judgment upon which it is based has been
8 reversed or otherwise vacated, or it is no longer
9 equitable that the judgment should have prospective
10 application; or (6) any other reason justifying relief
11 from the operation of the judgment.

12 Petitioner asserts it is fundamentally unfair for the court
13 to find the petition in this case untimely after dismissing the
14 petition in DuRoss v. California State Prison, No. Civ. S-01-2312
15 DFL PAN P for petitioner's failure to exhaust. But Supreme Court
16 precedent requires dismissal of petitions containing no exhausted
17 claims. Picard v. Connor, 404 U.S. 270 (1971). Accordingly,
18 petitioner does not demonstrate that he is entitled to relief
19 from judgment.

20 Therefore, petitioner's July 6, July 26, August 9, and
21 September 20, 2005, requests are denied.

22 So ordered.

23 DATED: 11/11/2005

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DAVID F. LEVI
United States District Judge